

VINCENT ZIRKER §
v. § CIVIL ACTION NO. 5:12cv34
WARDEN CARBAJAL, ET AL. §

The Plaintiff Vincent Zirker, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his rights during his confinement in the Federal Correctional Institution in Texarkana, Texas. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Zirker was ordered to pay an initial partial filing fee of \$6.34, pursuant to 28 U.S.C. §1915(b). He was also ordered to file an amended complaint setting out a short and plain statement of his claim, as required by Rule 8(a), Fed. R. Civ. P.

When Zirker did not comply with either of these orders, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice. The complaint refers to incidents which occurred in 2009 and 2010, as well as the present time, meaning that a dismissal without prejudice could operate as a dismissal with prejudice as to at least some of the plaintiff's claims. Consequently, the Magistrate Judge also recommended that the statute of limitations be suspended for a period of 60 days following the date of entry of final judgment.

Zirker received a copy of the Magistrate Judge's Report on July 7, 2012, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate

review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 6) is hereby ADOPTED as the opinion of the District Court. It is further


ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is hereby SUSPENDED for a period of sixty days following the date of entry of final judgment in this case. The suspension of the statute of limitations will not affect any claims which were already barred by the operation of that statute at the time that this lawsuit was filed; such claims would remain barred regardless of any suspension of the limitations period. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

It is SO ORDERED.

SIGNED this 4th day of September, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE